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December 19, 1956

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CONCORD, N.H.

Mr. James J. Barry, Commissioner
Department of Public Welfare
Concord, New Hampshire

Re: Status of Supervisory Unions
Comprising only One School
District

Dear Mr. Barry:

This is in response to your letter of November 30, 1956 requesting our opinion as to the status under the Social Security Act of Supervisory Unions comprising only one school district. You specifically ask whether all supervisory unions created by the Department of Education are separate political entities.

Supervisory unions are "political subdivisions" for social security purposes, by express statutory provision, RSA 101:2 VI, as amended, Laws 1955, Chapter 301, Part II, Section 3. As such its employees are eligible to participate in the Old Age and Survivors Insurance program. RSA 101:1, as amended, Laws 1955, Chapter 301, Part II, Section 1. When such a union has been formed by the State Board of Education (RSA 186:11 I) it enjoys the powers and attributes by law vested in all supervisory unions, including the status of a separate political subdivision for purposes of OASI. Any supervisory union duly created by the State Board of Education is therefore a distinct political entity for this purpose.

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By virtue of the foregoing it is apparent that both the cities and the respective supervisory unions coinciding therewith constitute separate political subdivisions and, subject to other provisions of law, the employees thereof are eligible to participate in the OASI program. The problem therefore resolves itself into a determination of the identity of the employer of the particular employee being considered.

The principle to be followed in determining the identity of the employer is contained in Section 288 of the OASI handbook:

"The general rule in determining the identity of the employer (as between separate political subdivisions) is that if there is any provision in the state law, expressed or implied, which authorizes employment of the individual, and the individual is hired under this authority, the individual is an employee of the . . . political subdivision to which the provision applies."

It is our understanding that the various political subdivisions, including supervisory unions are required to submit reports to the State Agency listing the employees of the particular subdivision. It is presumed that in preparing these reports representatives of the various political subdivisions applied the rules cited in the handbook where confronted with a problem requiring a determination of the identity of the employer. Information necessary to make the determination was available to local officials and it would seem that the reports should be accepted as correct unless you have information that would indicate otherwise. Payroll data was available to the local officials. They had access to votes and deliberations of the governing boards of the supervisory unions and local districts or departments. In addition, through the city solicitor current data concerning city charters and other special legislative enactments pertaining to school affairs was available. We are advised that in at least two instances the local officials consulted with their respective city solicitors in making their reports.

Very truly yours,

Elmer T. Bourque
Assistant Attorney General

ETB:W